

## Message Text

CONFIDENTIAL

PAGE 01 LA PAZ 10202 222249Z  
ACTION L-03

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FM AMEMBASSY LA PAZ

TO SECSTATE WASHDC IMMEDIATE 8663

C O N F I D E N T I A L LA PAZ 10202

EO 11652: GDS

TAGS: CASC, BL

SUBJECT: TREATY ON EXECUTION OF SANCTIONS

REF: STATE 304126

1. EXISTING FINAL TEXT OF TREATY HAS RECEIVED ALL GOB APPROVALS AND CLEARANCES AT HIGHEST LEVELS. EXECUTIVE BRANCH HAS EVEN INFORMALLY CLEARED TEXT WITH THE SUPREME COURT. HOWEVER, I RECENTLY HAD CONVERSATIONS WITH A CLOSE BANZER ADVISER, ALFREDO ARCE, AS WELL AS WITH THE NEW MINISTER OF INTERIOR, GEN JIMENEZ GALLO, WHICH INDICATED A MARKED LACK OF ENTHUSIASM FOR THE TREATY. JIMENEZ GALLO POINTEDLY SAID THAT SINCE THE TREATY NEGOTIATIONS HAD BEEN CONCLUDED BEFORE HE TOOK OFFICE, HE WAS NOT FREE TO ATTEMPT CHANGES. NONETHELESS, HE IS CLEARLY UNCOMFORTABLE ABOUT BEING THE INCUMBENT MINISTER NOW THAT THE TREATY IS READY FOR SIGNATURE AND HE IS NOT HAPPY ABOUT HAVING TO ACCEPT A LARGE MEASURE OF POLITICAL RESPONSIBILITY FOR IT. I AM VERY CONCERNED THAT HE WOULD SEIZE UPON OUR POSSIBLE REQUEST FOR TEXTUAL CHANGE IN ORDER TO REOPEN BROADER NEGOTIATIONS ON THE TEXT AND POSSIBLY TO DELAY NEGOTIATION AND MANEUVER TO SHIFT RESPONSIBILITY FOR THE TREATY AWAY FROM HIMSELF. I THEREFORE DO NOT FEEL THAT THE POINT RAISED IN REFTEL IS WORTH THE RISK IT INVOLVES FOR THE OVERALL SUCCESS OF THE TREATY ENDEAVOR ON A TIMELY BASIS.

2. I SERIOUSLY DOUBT THAT THE GOB WILL DROP THE PARAGRAPH

CONFIDENTIAL

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PAGE 02 LA PAZ 10202 222249Z

IN QUESTION. DURING THE TREATY NEGOTIATIONS, USG REPRESENTATIVES REQUESTED DELETION OF ARTICLE III, PARA 6. WE WERE AWARE THAT US LEGISLATION AND PREVIOUSLY-SIGNED TREATIES WERE KEYED TO THE TRANSFER OF PRISONERS WITHOUT A SPECIFIC REQUIREMENT THAT FINES AND CIVIL DAMAGES BE PAID PRIOR TO REPATRIATION. GOB WOULD NOT AGREE TO THE DELETION AND BASED THEIR POSITION ON TWO MAIN GROUNDS. FIRST, AS AN INTEGRAL PART OF THEIR LEGAL

SYSTEM WHERE A CRIMINAL CHARGE ALSO GIVES RISE TO A CIVIL CAUSE OF ACTION, THE CIVIL ACTION IS ALWAYS INCLUDED IN THE CRIMINAL ACTION. A SINGLE SENTENCE IS PRONOUNCED COVERING CRIMINAL PENALTIES AND CIVIL DAMAGES. GOB FELT THAT THEIR SYSTEM SHOULD BE RECOGNIZED AND RESPECTED IN THE TREATY BY PROVIDING SPECIFICALLY THAT THE CIVIL DAMAGES PORTION OF A CRIMINAL SENTENCE BE DISCHARGED PRIOR TO THE TRANSFER OF AN OFFENDER TO HIS HOME COUNTRY FOR COMPLETION OF A PRISON SENTENCE. SECOND, THE GOB CONSIDERED SUCH A PROVISION NECESSARY TO BEST PROTECT BOLIVIAN CITIZENS INJURED BY US OFFENDERS. GOB WAS OPENLY SKEIPTICAL THAT MONETARY DAMAGES OR FINES WOULD BE RECOVERABLE THROUGH COURT ACTIONS INITIATED IN US COURTS BY US REPRESENTATIVES AFTER THE OFFENDER'S TRANSFER BACK TO US. THE GOB SEEMED TO FEEL THAT ARTICLE III (6) COULD BE POINTED TO IN DEFENSE OF A TREATY OTHERWISE GENERALLY UNPOPULAR LOCALLY AS A PROVISION WHICH WOULD PROTECT BOLIVIAN INTERESTS. FROM GOB POINT OF VIEW, THE SPECIFIC INCLUSION OF THE PROVISION AVOIDS A POTENTIAL FOR INFLUENCE PEDDLING AND BRIBERY TO THE DETRIMENT OF INJURED PARTIES WHICH WOULD BE INHERENT IN A CASE-BY-CASE TREATMENT OF THE ISSUE IN THE FUTURE.

3. I QUESTION WHETHER DAMAGES AND FINES IS A CRITICAL ISSUE IN PRISONER EXCHANGE TREATIES DOMINATED BY NARCOTICS OFFENDERS. CIVIL DAMAGES WOULD RARELY BE INVOLVED IN NARCOTICS CASES. HERE IN BOLIVIA NOT A SINGLE SENTENCE HAS INCLUDED CIVIL DAMAGES. CRIMINAL FINES ASSESSED ARE GOVERNED BY SPECIFIC PROVISIONS OF

CONFIDENTIAL

PAGE 03 LA PAZ 10202 222249Z

THE PENAL CODE HERE AND, I ASSUME, ELSEWHERE AND ARE NOT UNREASONABLE BY US CRIMINAL JUSTICE STANDARDS AND INCOME LEVELS. THUS, THE POSSIBILITY OF EXTORTION IN ASSESSMENT OF MONETARY PENALTIES APPEARS REMOTE FOR BOTH THE CRIMINAL AND CIVIL ASPECTS OF NARCOTICS SENTENCES. THE BOLIVIAN PENAL CODE DOES PROVIDE FOR REDUCTION TO A MINIMUM OF FINES IN CASES OF DESTITUTE PRISONERS (ARTICLES 29 TO 31) AT THE DISCRETION OF THE JUDGE UPON ADEQUATE SHOWING OF FINANCIAL INABILITY TO PAY. A BRITISH SUBJECT (JACKSON) WHO HAD COMPLETED HIS SENTENCE HERE WAS RECENTLY RELEASED AFTER THE JUDGE'S DECISION SETTING ASIDE 10,000 PESO FINE, IN PART ON GROUNDS OF DESTITUTE STATUS.

4. I WOULD HOPE THAT PROBLEM OF PRECEDENTS COULD BE HANDLED BY MEANS OTHER THAN PREJUDICING EARLY IMPLEMENTATION OF THE US-BOLIVIAN TREATY. EACH COUNTRY HAS TO BE TREATED SEPARATELY AND CONCERN OVER POTENTIAL ISSUES IN FUTURE TREATIES YET TO BE NEGOTIATED SHOULD NOT OVERRIDE LOCAL SENSITIVITIES ON ISSUES NOT CENTRAL TO A BASIC AGREEMENT.

5. OUR APPROACH IN NEGOTIATING THE TREATY HAS BEEN TO LIMIT WHEREVER POSSIBLE THE EXERCISE OF DISCRETIONARY ACTIONS BY GOB OFFICIALS IN THE APPLICATION OF THE TREATY. OF COURSE, GOB HAS

TO APPROVE ANY TRANSFER BUT REQUEST TO INITIATE TRANSFER WAS DELIBERATELY PLACED WITH USG IN ORDER TO EXPEDITE TRANSFER PROCESS AND HAVE GOB IN PASSIVE RATHER THAN ACTIVE ROLE IN IMPLEMENTATION. CASE-BY-CASE-GOB INVOLVEMENT RE SETTLEMENT OF DAMAGES QUESTIONS PRIOR TO CONSENT FOR TRANSFER WOULD LIKELY CAUSE LENGTHY DELAYS IN SUCH CASES. I CONSIDER AUTOMATICITY OF TREATMENT OF PAYMENT OF FINES AND DAMAGES ACCORDING TO CURRENT ARTICLE III, PARA 6 (CONFIDENT TO THOSE INCLUDED IN THE SENTENCE) TO BE PREFERABLE FROM USG POINT OF VIEW TO RELIANCE ON A SIMILAR STATED GOB POLICY EXPRESSED OUTSIDE THE TREATY.

6. AS DEPARTMENT AWARE, A NUMBER OF US PRISONERS PREVIOUSLY RELEASED ON PAROLE HAVE QUIETLY LEFT THE COUNTRY WITHOUT THE OFFICIAL KNOWLEDGE OF THE COURTS OR OF THE MINISTRY OF INTERIOR.  
CONFIDENTIAL

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PAGE 04 LA PAZ 10202 222249Z

SUBSECRETARY BALLIVIAN HAS REPEATEDLY EXPRESSED CONCERN THAT LIKELY LEAKS AND SUBSEQUENT DISCLOSURE BY THE PRESS OF THE FACTS REGARDING THE PRISONERS' DEPARTURES WILL RUIN CHANCES FOR CONTINUED RETURN TO THE US OF PAROLED OFFENDERS AND COULD LEAD TO EXPRESSIONS OF PUBLIC OPINION AGAINST THE TREATY. BALLIVIAN EXPRESSED THE VIEW THAT PROMPT SIGNATURE OF THE TREATY WOULD PROVIDE A JUSTIFICATION FOR GOB ACQUIESCENCE IN CASES OF THIS KIND DURING THE PERIOD PRIOR TO ENTRY INTO FORCE OF THE TREATY. BALLIVIAN REQUESTED WE SIGN THE TREATY TOMORROW, DECEMBER 23, IF POSSIBLE, IN ORDER TO COVER THE EXPOSED POSITION IN WHICH THE GOB PERCEIVES ITSELF TO BE CAUGHT ON OUR BEHALF AT THE PRESENT TIME.

7. WHILE I UNDERSTAND JUSTICE'S CONCERN, I BELIEVE THE BALANCE OF OUR INTERESTS WOULD BE BEST SERVED BY MY RECEIVING AUTHORITY TO SIGN THE TREATY TEXT AS IS AT THE EARLIEST POSSIBLE DATE.  
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